

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

GERARDO LUNA-BENITEZ,

Petitioner,

v.

GARRETT LANEY, Superintendent,
Oregon State Correctional Institution,

Respondent.

Case No. 6:18-cv-02217-SU

ORDER

IMMERGUT, District Judge.

On March 31, 2020, Magistrate Judge Patricia Sullivan issued her Findings & Recommendation (“F&R”) recommending that Petitioner’s Petition for Writ of Habeas Corpus be denied. ECF 24. Judge Sullivan further recommended that the Court enter a judgment of dismissal with prejudice and decline to issue a Certificate of Appealability. *Id.* at 10. No party filed objections to the F&R.

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or

recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, sua sponte” whether de novo or under another standard. *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee to the Federal Rules recommends reviewing for clear error when no timely objection is filed. Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment.

As no party filed objections, this Court has reviewed the F&R for clear error. Finding none, this Court adopts Magistrate Judge Sullivan’s F&R in full.¹ ECF 24. Petitioner’s Habeas Petition, ECF 1, is DENIED, and this case is DISMISSED with prejudice. This Court DECLINES to issue a Certificate of Appealability because Petitioner has not made a substantial showing of the denial of a constitutional right, as required under 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 8th day of June, 2020.



Karin J. Immergut
United States District Judge

¹ Footnote 2 of Judge Sullivan’s F&R was written while *Ramos v. Louisiana*, No. 18-5924, was pending before the United States Supreme Court. On April 20, 2020, the Court found that the Sixth Amendment requires a unanimous jury verdict to convict a defendant of a serious criminal offense. *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020). Nevertheless, Petitioner has not provided any reason to excuse the procedural default of his claim pertaining to his conviction by a non-unanimous jury. Accordingly, that claim is dismissed.